

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

THOMAS JOSEPH BROPHY, JR., and  
VIRGINIA RUTH BROPHY,

Case No. 17-10337-j7  
Chapter 7

Debtors.

**CHAPTER 7 TRUSTEE'S APPLICATION TO (I) EMPLOY UNITED COUNTRY-  
BIRDSONG AUCTION & REAL ESTATE GROUP, LLC (TRAVIS BIRDSONG,  
BROKER/ AUCTIONEER) AND UNITED COUNTRY-ARIZONA AUCTION &  
PROPERTY (JOHN PAYNE, BROKER); AND (II) MOTION TO SELL REAL  
PROPERTY AT AUCTION**

Clarke C. Coll, Chapter 7 Trustee of the Thomas Joseph Brophy, Jr. and Virginia Ruth Brophy bankruptcy estate (the “**Trustee**”), by counsel, and pursuant to 11 U.S.C. §327(a) and 363(b), and other applicable law, requests the Court (i) approve his employment of (a) United Country-Birdsong Auction & Real Estate Group, LLC (Travis Birdsong, Auctioneer) (“**Birdsong Auction**”), (b) United Country- Arizona Auction & Property (John Payne, Broker)(“**Arizona Auction**”) (together, “**United Country**”), to serve as the Trustee’s auctioneer and broker for the Property (as defined herein), in accordance with the terms and conditions set forth on the *Auction Listing Contract with Exclusive Right to Sell* (“**Agreement**”) a true and correct copy of which is attached hereto as Exhibit A and more fully describe below, and (ii) enter an Order authorizing the Trustee to sell the Patagonia Property (as defined herein), at auction, free and clear of liens, claims, and other encumbrances. In support of this Motion, the Trustee states:

**I. BACKGROUND**

1. Jurisdiction and Venue. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Commencement of the Case. On February 16, 2017 (the “**Petition Date**”), the debtors Thomas Joseph Brophy, Jr. and Virginia Ruth Brophy (together, the “**Debtors**”) commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Clarke C. Coll was appointed chapter 7 trustee of the above-captioned case and continues to serve in that capacity.

3. The Debtors’ Real Property. As disclosed on the Debtors Schedule A, the estate owns vacant land located at 107 Red Mountain Ct., Patagonia, AZ 85624 (the “**Patagonia Property**”).

## **II. EMPLOYMENT OF BROKER/ AUCTIONEER**

4. Trustee’s Employment of United Country. The Trustee requests Court approval to employ United Country as auctioneer and broker for the purposes of conducting an auction of the Patagonia Property. Travis Birdsong of Birdsong Auction is a New Mexico Qualifying Broker, License # 19661. He would work in cooperation with John Payne of Arizona Auction who is a qualifying broker in Arizona.

5. Services Provided. United Country would provide general real estate brokerage services, including but not limited to:

- a. Providing input to the Trustee regarding type, and location of an auction, in order to best maximize the return on the Patagonia Property;
- b. Creating a meaningful advertising program for the auction, including determining target market, geographic area, and marketing mix, and marketing medium;
- c. Oversight of design, copying, and printing and distribution of advertisements, as well as possibly placing ads in newspapers and magazines, or on the radio and television, as the sale warrants;

- d. Conducting an online auction;
- e. Monitoring, and documenting the auction and the proceeds generated;
- f. Assist in closing the sale; and,
- g. Any other services necessary or appropriate to assist the Trustee in conducting an auction and otherwise selling the Patagonia Property.

6. Payment Arrangement: As compensation for their services, United Country will charge the buyer at the auction a ten percent (10%) buyer's premium of the purchase price of the Patagonia Property. Birdsong Auction would receive 40% of the buyer's premium. Arizona Auction would receive the other 60% of the buyer's premium.

Furthermore, United Country may expend and charge to the Trustee's auction proceeds to an amount not to exceed \$2,500.00 for advertising and promotional expenses for the auction of the Patagonia Property, all in accordance with Agreement. Since the estate currently has no funds with which to pay the advertising and promotional expenses, United Country has agreed to pay the advance the cost which would be credited from the proceeds of an eventual sale.

7. The auction would be a reserve auction. Under the Agreement, Trustee reserves the right to reject the bids offered on the Patagonia Property until the bidding reaches \$15,000.00, at which point United Country is authorized to announce that the sale of the Patagonia Property be absolute. In the event the highest bid does not reach \$15,000.00 the Agreement shall convert to an agreement for brokerage services by and through a sale of the Patagonia Property or a reschedule auction. The brokerage agreement shall expire on January 31, 2020. Any rescheduled auction would be conducted as an absolute auction in which Trustee will agree to close on the sale regardless of the sales price achieved at auction.

8. The Auction Listing Contract further provides that, in the event a successful bidder was produced by a cooperating licensed broker, Birdsong will split its 10% commission such that the buyer's broker receives a commission of 2% on the total sale price, plus applicable gross receipts tax, and United Country receives 8%, plus applicable gross receipts tax. United Country would split the 8% commission as described in paragraph 6 of this Motion.

9. Trustee's Employment of United Country is in the Best Interest of the Estate. The Trustee believes that granting this Application would be in the best interest of the bankruptcy estate and its creditors because the auction is the most efficient way to convert assets to cash. United Country is well qualified to serve as the Trustee's auctioneer in this case, and the Trustee supports this Motion with a discussion of various other factors, as follows:

- a. Travis Birdsong has been a licensed Real Estate Broker and Auctioneer for over 22 years;
- b. He is a New Mexico Qualifying Broker, License # 19661.
- c. Travis Birdsong would cooperate with John Payne, an Arizona Qualifying Broker, License # BR52735500;
- d. Travis Birdsong has spent most of his professional life in the business of selling and valuing assets;
- e. Travis Birdsong is an experienced auctioneer, having conducted over 1000 auctions; and
- f. Birdsong and United Country is a leader in multi-parcel land auctions, conducting several multi-million dollar sales annually.

10. To the best of the Trustee's knowledge, information, and belief, United Country, Travis Birdsong and John Payne have no connections with the Trustee, the Debtors, their creditors,

or any other party in interest or their respective attorneys, other than any connections set out in their disclosures attached hereto as Exhibit B.

11. Trustee requests that United Country's employment be made effective as of the date of filing this Application.

### **III. PROPOSED SALE AND AUCTION PROCEDURES**

12. Transfer of the Patagonia Property will be by Special Warranty Deed. The Trustee has agreed to pay for an owner's title insurance policy and may purchase his own seller's title insurance policy, at the expense of the bankruptcy estate. Otherwise, the Trustee will split the costs of closing costs equally (50/50) with the purchaser. Real property taxes will be prorated to the date of closing. A survey, if requested for any purpose other than clear title, shall be an expense of the buyer. The Trustee is unaware of any other costs or expenses that will need to be paid before completing the proposed auction, however, to the extent that such costs and/or expenses become known to the Trustee and are necessary to complete the proposed auction and close the sale, the Trustee requests permission to pay any and all such costs and expenses.

13. The Proposed Auction is fair and equitable, and is in the best interests of and beneficial to the Debtors estate and the creditors. The Trustee believes that granting this Motion would be in the best interest of the bankruptcy estate, maximizing the value of the Patagonia Property for creditors. Immediately prior to the Petition Date, Debtor had the Patagonia Property listed for sale at \$85,000.00. Trustee re-listed the Patagonia Property in June of 2017 by La Frontera Realty, LLC with an original listing price of \$80,000.00. After not receiving any offers, Trustee reduced the listing price to \$70,000.00 in December of 2017; \$60,000.00 in February of 2019, \$50,000.00 in July of 2018, and \$45,000.00 in September of 2018. In February of 2019, the listing agreement with La Frontera Realty, LLC expired. During the course of listing, Trustee only

received verbal interest from one party but the interest never culminated into a formal offer. In fact, no formal offers were made on the Patagonia Property. The Trustee's counsel has discussed marketing and selling the Patagonia Property with several real property brokers, who believe a sale will be difficult. The Trustee believes this is the best opportunity for the estate to realize any value from the Patagonia Property given the limited market activity.

14. The Trustee requests the court approval of any sale for \$15,000.00 or more.

15. In the event the Patagonia Property does not sell for \$15,000.00 the result of the auction will be subject to the review and approval by this Court. The Trustee requests that the court set a hearing as soon as practicable after the auction to approve and confirm the sale.

WHEREFORE, the Trustee requests that the Court enter an order (i) approving the employment of United Country as auctioneer and broker for the Trustee in order to auction and list the Patagonia Property on the terms set forth herein, effective as of the date this Application was filed; (ii) approving compensation of United Country through the 10% buyer's premium described in the Agreement and reimbursement of advertising expenses not to exceed \$2,500.00 to United Country from the sale proceeds, effective as of the date of filing this Application; (iii) authorizing the Trustee to conduct an auction of the Patagonia Property, with a reserve price \$15,000.00; (iv) approving the sale of the Patagonia Property for at least \$15,000.00 to the highest bidder, without further Court Order or notice to creditors; (v) authorizing the Trustee to pay all costs and expenses as set forth herein, from estate funds or the proceeds of the auction without further notice to creditors; and (vi) for such other relief as is appropriate.

Respectfully submitted,

ASKEW & MAZEL, LLC

By: s/ filed electronically

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*Attorneys for the Chapter 7 Trustee*

This certifies that on June 14, 2019 a copy of the foregoing pleading was served by the Bankruptcy Court's electronic filing system on all parties who have entered an appearance in this case.

s/ filed electronically

Jacqueline N. Ortiz